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10/599,870	10/12/2006	Alan Eward Litke	LC-509/PCT/US	5885

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/599,870	LITKE ET AL.	
	Examiner	Art Unit	
	MICHAEL PEPITONE	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,6-14,20,21 and 25-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,6-14,20,21 and 25-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-14, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kang *et al.* (US 6,265,061).

Regarding claims 1-2, 6-10: Kang *et al.* teaches an abrasion resistant coating (abstract, 1:15-20; ex. 1) comprising a ceramer containing (4:14-40) pentaerythritol triacrylate (PETA) (28:1-29:26); 35.2 wt% of a colloidal silica having an average particle size of 20 nm {NALCO 2327} [instant claims 2, 7-10] (28:50-29:26); and a photoinitiator which absorbs in the range of 180-400 nm (below 333 nm) {IRGACURE 184 (1-hydroxy-cyclohexyl-1-phenyl-ketone)} [instant claims 6] (29:5-8). Kang *et al.* teaches formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184 (37:50-38:63; ex. 16; Table 15), wherein the UV cured coating passes a steel wool test (Table 15).

The Office realizes that all the claimed effects or physical properties are not positively stated by the reference. However, the reference teaches all of the claimed reagents and was prepared under similar conditions. Therefore, the claimed effects and physical properties, i.e. the coating being capable of maintaining about 95% of its post-cure gloss when subjected to about 100 cycles of grade 3 steel wool with a load of about 50 lbs [instant claim 1], would inherently

be achieved by a composition with all the claimed ingredients. If it is the applicants' position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Regarding claim 3: Kang *et al.* teaches pentaerythritol tetra(meth)acrylate (19:27-54) {substitute for pentaerythritol triacrylate (PETA)}.

Regarding claim 10: Kang *et al.* teaches about 35% silica (28:50-29:8).

Regarding claims 11-12: Kang *et al.* teaches N,N-dimethylacrylamide (28:11; 29:65-30:12).

Regarding claims 13-14: Kang *et al.* teaches stabilizers {phenothiazine} (21:55-61; 28:62) including ozone stabilizers (22:12-24); thermal stabilizers/antioxidants (22:25-43); UV stabilizers (21:62-22:11; 28:30-44) such as hindered amine light stabilizers (Tables 1, 16).

Regarding claim 21: Kang *et al.* teaches trimethylolpropane tri(meth)acrylate (19:27-54) {substitute for pentaerythritol triacrylate (PETA)} (28:1-29:26) in an amount of about 21 wt%; and N,N-dimethylacrylamide in an amount of about 3.3 wt% (28:11; 29:65-30:12; 37:50-38:63; Ex. 16; Table 17).

Claims 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kang *et al.* (US 6,265,061).

Regarding claims 25-26: Kang *et al.* teaches an abrasion resistant coating (abstract, 1:15-20; ex. 1) comprising a ceramer containing (4:14-40) pentaerythritol triacrylate (PETA) (28:1-

29:26); 35.2 wt% of a colloidal silica having an average particle size of 20 nm {NALCO 2327} (28:50-29:26); and a photoinitiator which absorbs in the range of 180-400 nm (below 333 nm) {IRGACURE 184 (1-hydroxy-cyclohexyl-1-phenyl-ketone)} (29:5-8). Kang *et al.* teaches formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184 (37:50-38:63; ex. 16; Table 15), wherein the cured coating passes a steel wool test (Table 15); and formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184, and about 3 wt% DMA (37:50-38:63; ex. 16; Table 17), wherein the UV cured coating passes a steel wool test (Tables 15, 17).

The Office realizes that all the claimed effects or physical properties are not positively stated by the reference. However, the reference teaches all of the claimed reagents and was prepared under similar conditions. Therefore, the claimed effects and physical properties, i.e. the coating being capable of maintaining about 95% of its post-cure gloss when subjected to about 100 cycles of grade 3 steel wool with a load of about 50 lbs [instant claim 26], would inherently be achieved by a composition with all the claimed ingredients. If it is the applicants' position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Kang *et al.* (US 6,265,061).

Regarding claim 27: Kang *et al.* teaches a retroreflective sheet {road reflector} (34:44-63; 37:50-38:64) coated with Kang *et al.* teaches an abrasion resistant coating (abstract, 1:15-20; ex. 1) comprising a ceramer containing (4:14-40) pentaerythritol triacrylate (PETA) (28:1-29:26); 35.2 wt% of a colloidal silica having an average particle size of 20 nm {NALCO 2327} (28:50-29:26); and a photoinitiator which absorbs in the range of 180-400 nm (below 333 nm) {IRGACURE 184 (1-hydroxy-cyclohexyl-1-phenyl-ketone)} (29:5-8). Kang *et al.* teaches formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184 (37:50-38:63; ex. 16; Table 15), wherein the cured coating passes a steel wool test (Table 15); and formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184, and about 3 wt% DMA (37:50-38:63; ex. 16; Table 17), wherein the UV cured coating passes a steel wool test (Tables 15, 17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 6, 9-11, 13-14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrine *et al.* (US 2003/0194549).

Regarding claims 1-2, 9-10, and 20: Perrine *et al.* teaches an abrasion resistant coating (abstract, ¶ 1) comprising a curable (meth)acrylate (¶ 25, 39, Table 1); an inorganic filler having a particle size of 25-30 nm {DK100 silica} (¶ 13, 36, 39, Tables 1, 3-5); and a photoinitiator which absorbs in the range of 180-400 nm (¶ 26-27) {Darocur 1173 (2-hydroxy-2-methyl-1-phenyl-propan-1-one)} (¶ 39, 46), wherein the coating was agitated for several minutes to disperse the particles in the coating. Example 4 (46-51; Tables 4-5) contains a total of about 18 wt% of inorganic oxide (¶ 35-38) dispersed within coating B, corresponding to about 23 wt% based on curable (meth)acrylates contained in coating B.

Perrine *et al.* does not disclose a specific embodiment containing about 30 to about 50 wt% of alumina/silica panicles. However, at the time of invention a person of ordinary skill in the art would have found it obvious to have utilized up to 35 wt% silica based on the invention of Perrine *et al.*, and would have been motivated to do so since Perrine *et al.* suggests that the amount of silica should be added to the composition in order to impart a desired level of abrasion resistance, with a general trend of a higher concentration of particles, the greater the abrasion resistance (¶ 30), and as much as 35 wt% of alumina/silica particle can be employed (¶ 30). See also *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) [MPEP 2144.05].

The Office realizes that all the claimed effects or physical properties are not positively stated by the reference. However, the reference teaches all of the claimed reagents and was

prepared under similar conditions. Therefore, the claimed effects and physical properties, i.e. the coating being capable of maintaining about 95% of its post-cure gloss when subjected to about 100 cycles of grade 3 steel wool with a load of about 50 lbs, would implicitly be achieved by a composition with all the claimed ingredients. If it is the applicants' position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Regarding claim 3: Perrine *et al.* teaches urethane acrylate (¶ 25, 39, Table 1).

Regarding claim 6: Perrine *et al.* teaches {Darocur 1173 (2-hydroxy-2-methyl-1-phenyl-propan-1-one)} (¶ 26-27, 39).

Regarding claim 11: Perrine *et al.* teaches ditrimethylol propane tetraacrylate and tripropylene glycol diacrylate {reactive diluents} (¶ 39, Table 1, 4).

Regarding claims 13-14: Perrine *et al.* teaches photosensitizers {benzophenone}; UV stabilizers {hydrophenyl triazines}; and hindered amine light stabilizers (¶ 27, Table 1).

Claims 12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrine *et al.* (US 2003/0194549) as applied to claim 11 above, in further view of Ha *et al.* (US 2002/0032251).

Regarding claims 12 and 21: Perrine *et al.* teaches the basic claimed composition [as set forth above with respect to claim 11], wherein N-vinyl-2-pyrrolidone is used as a reactive diluent

in an amount of 10.9 wt%; and tripropylene glycol diacrylate is used in an amount of 11.8 wt% (¶ 39, 46, Tables 1 and 4).

Perrine *et al.* does not disclose N,N-dimethylacrylamide as a reactive diluent [instant claims 11 and 21] or trimethylolpropane triacrylate [instant claim 21]. However, Ha *et al.* teaches a UV-curable acrylate based composition (¶ 14-20) containing reactive diluents such as N-vinylpyrrolidone and N,N-dimethylacrylamide (¶ 72-76); tripropylene glycol diacrylate, and trimethylolpropane triacrylate. Perrine *et al.* and Ha *et al.* are analogous art because they are concerned with a similar technical difficulty, namely the preparation of UV-curable acrylate based composition containing reactive diluents. At the time of invention a person of ordinary skill in the art would have found it obvious to have combined N,N-dimethylacrylamide and trimethylolpropane triacrylate, as taught by Ha *et al.* in the invention of Perrine *et al.*, and would have been motivated to do so since Ha *et al.* suggests that N,N-dimethylacrylamide and N-vinylpyrrolidone are equivalent reactive diluents (¶ 72-76); and trimethylolpropane triacrylate and tripropylene glycol diacrylate are equivalent reactive diluents (¶88).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kang *et al.* (US 6,265,061) as applied to claim 1 above.

Regarding claim 20: Kang *et al.* teaches the basic claimed composition [as set forth above with respect to claim 1], wherein a preferred embodiment containing about 154% Nalco 2327 {colloidal silica} by weight of PETA (Tables 15, 17).

Kang *et al.* does not teach a specific embodiment containing 30-50 wt% Nalco 2327 {colloidal silica} by weight of PETA. However, the ceramer could contain about 10 to about

100 parts by weight binder per 100 parts by weight of the colloidal inorganic oxide; and when the colloidal inorganic oxide is provided as a sol, the sol includes about 2 to about 50 wt% of the colloids (7:38-56); the ceramer could preferably contain about 50 to about 60 wt% binder and about 35 to about 40 wt% colloid (7:58-63), wherein about 60 wt% PETA and about 35 wt% Nalco 2327 would correspond to about 58 wt% Nalco 2327 {colloidal silica} by weight of PETA. At the time of invention a person of ordinary skill in the art would have found it obvious to have employed about 30-50 wt% colloid by weight of binder {PETA} based on the invention of Kang *et al.*, and would have been motivated to do so since Kang *et al.* suggests that the ceramer composition can contain a ceramer having 2 to about 50 wt% of the colloids {affording about 3 to about 83 wt% colloid based on weight of PETA {using 60 wt% PETA}. See also *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) [MPEP 2144.05].

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perrine *et al.* (US 2003/0194549).

Regarding claim 27: Perrine *et al.* teaches an abrasion resistant coating (abstract, ¶ 1) comprising a curable (meth)acrylate (¶ 25, 39, Table 1); an inorganic filler having a particle size of 25-30 nm {DK100 silica} (¶ 13, 36, 39, Tables 1, 3-5); and a photoinitiator which absorbs in the range of 180-400 nm (¶ 26-27) {Darocur 1173 (2-hydroxy-2-methyl-1-phenyl-propan-1-one)} (¶ 39, 46), wherein the coating was agitated for several minutes to disperse the particles in the coating. Example 4 (46-51; Tables 4-5) contains a total of about 18 wt% of inorganic oxide (¶ 35-38) dispersed within coating B. Perrine *et al.* teaches the abrasion resistance coating can be applied to a variety of substrates including wood, plastics, ceramic, metal, and glass (¶ 31).

Perrine *et al.* does not disclose a specific embodiment containing about 30 to about 50 wt% of alumina/silica panicles. However, at the time of invention a person of ordinary skill in the art would have found it obvious to have utilized up to 35 wt% silica based on the invention of Perrine *et al.*, and would have been motivated to do so since Perrine *et al.* suggests that the amount of silica should be added to the composition in order to impart a desired level of abrasion resistance, with a general trend of a higher concentration of particles, the greater the abrasion resistance (¶ 30), and as much as 35 wt% of alumina/silica particle can be employed (¶ 30). See also *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) [MPEP 2144.05].

Perrine *et al.* does not disclose a specific embodiment having the abrasion resistance coating applied to a road reflector. However, at the time of invention a person of ordinary skill in the art would have found it obvious to have coated the abrasion resistance coating on at least one surface of a road reflector based on the invention of Perrine *et al.*, and would have been motivated to do so since Perrine *et al.* suggests that the abrasion resistance coating can be applied to a variety of substrates including wood, plastics, ceramic, metal, and glass (¶ 31).

Response to Arguments

Applicant's arguments filed 7/16/09 have been fully considered but they are not persuasive. The rejection of claims 1-3, 6-14, and 21 based upon Kang *et al.* (US 6,265,061) is maintained for reason of record and following response.

Kang *et al.* (US '061) discloses an abrasion resistant coating (abstract, 1:15-20; ex. 1) comprising a ceramer containing (4:14-40) pentaerythritol triacrylate (PETA) (28:1-29:26); 35.2 wt% of a colloidal silica having an average particle size of 20 nm {NALCO 2327} (28:50-

29:26); and a photoinitiator which absorbs in the range of 180-400 nm (below 333 nm) {IRGACURE 184 (1-hydroxy-cyclohexyl-1-phenyl-ketone)} (29:5-8). Kang *et al.* teaches formulations comprising about 22% PETA, 34% Nalco 2327, 0.850% IRGACURE 184 (37:50-38:63; ex. 16; Table 15), wherein the UV cured coating passes a steel wool test (Table 15). While Kang *et al.* (US '061) does not specifically disclose the claimed abrasion resistance properties recited in claim 1, "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) [see MPEP 2112.01].

Perrine *et al.* (US 2003/0194549) was relied on for disclosing an abrasion resistant coating (abstract, ¶ 1) comprising a curable (meth)acrylate (¶ 25, 39, Table 1); an inorganic filler having a particle size of 25-30 nm {DK100 silica} (¶ 13, 36, 39, Tables 1, 3-5); and a photoinitiator which absorbs in the range of 180-400 nm (¶ 26-27) {Darocur 1173 (2-hydroxy-2-methyl-1-phenyl-propan-1-one)} (¶ 39, 46), wherein the coating was agitated for several minutes to disperse the particles in the coating. Example 4 (46-51; Tables 4-5) contains a total of about 18 wt% of inorganic oxide (¶ 35-38) dispersed within coating B, corresponding to about 23 wt% based on curable (meth)acrylates contained in coating B. Perrine *et al.* discloses as much as 35 wt% of alumina/silica particle can be employed (¶ 30) {see above}.

Ha *et al.* (US 2002/0032251) was relied for disclosing UV-curable acrylate based compositions (¶ 14-20) containing reactive diluents such as N-vinylpyrrolidone and N,N-dimethylacrylamide (¶ 72-76); tripropylene glycol diacrylate, and trimethylolpropane triacrylate.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Perrine *et al.* (US '549) discloses N-vinyl-2-pyrrolidone is used as a reactive diluent in an amount of 10.9 wt%; and tripropylene glycol diacrylate is used in an amount of 11.8 wt% (¶ 39, 46, Tables 1 and 4). Ha *et al.* (US '251) discloses reactive diluents such as N-vinylpyrrolidone and N,N-dimethylacrylamide (¶ 72-76); tripropylene glycol diacrylate, and trimethylolpropane triacrylate. At the time of invention a person of ordinary skill in the art would have found it obvious to have combined N,N-dimethylacrylamide and trimethylolpropane triacrylate, as taught by Ha *et al.* in the invention of Perrine *et al.*, and would have been motivated to do so since Ha *et al.* suggests that N,N-dimethylacrylamide and N-vinylpyrrolidone are equivalent reactive diluents (¶ 72-76); and trimethylolpropane triacrylate and tripropylene glycol diacrylate are equivalent reactive diluents (¶88) [see MPEP 2144.06].

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL PEPITONE whose telephone number is (571)270-3299. The examiner can normally be reached on M-F, 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MFP
11-November-09

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796